

97 1553642

RECORDING REQUEST BY

WHEN RECORDED MAIL TO

NAME

MAILING  
ADDRESS

CITY, STATE  
ZIP CODE

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF BURBANK  
P. O. BOX 6459  
BURBANK, CA 91510

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA

11:01 AM OCT 07 1997

1702

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FEE \$ 190001

62

D.A. FEE Code 20 \$ 2.00

NBC MASTER PLAN DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF BURBANK

AND

NATIONAL BROADCASTING COMPANY, INC.

RELATIVE TO THE PLANNED DEVELOPMENT OF

THE NBC MASTER PLAN



## NBC MASTER PLAN DEVELOPMENT AGREEMENT

This NBC Master Plan Development Agreement (the "Agreement") is entered into this 19 day of March, 1997, by and between the NATIONAL BROADCASTING COMPANY, INC., (the "Developer"), and the CITY OF BURBANK (the "City"), a municipal corporation of the State of California.

### RECITALS

A. Developer is the owner of the real property located in the City of Burbank, County of Los Angeles, State of California, outlined in Exhibit "A", Depiction of Project Site, referred to as the "Project Site," the legal description of which is set forth in Exhibit "B", Legal Description of Project Site.

B. City is authorized to enter into development agreements with persons having a legal or equitable interest in real property which is located within the City, pursuant to Government Code Sections 65864 to 65869.5.

C. City has adopted procedures and requirements for consideration of development agreements, pursuant to Section 65865 of the Government Code, in the "Development Agreement Ordinance" set forth in Division 9, Sections 31-1997 et seq. of the Burbank Municipal Code (the "Code").

D. City has also adopted Division 10, Sections 31-19118 et seq. of the Code, the "Planned Development Ordinance", establishing procedures and requirements for consideration of planned development projects to accommodate major and unique developments in the City, including combinations of uses and modified development standards which would create a desirable, functional, and community environment under the controlled conditions of a development plan. The Planned Development Ordinance requires that the approval of a planned development be subject to a developer entering into a development agreement under the Development Agreement Ordinance.

E. City has also adopted Ordinance-No. 3224, the "Media District Specific Plan," a comprehensive growth control ordinance governing all new development in the Media District, and Article 21, Sections 31-2101 et seq. of the Code (the "MDSP"), establishing the "Media District Overlay Zone," which regulates commercial and industrial land within the "Media District," where the Project Site is located, for use, density, height, and setbacks, as well as other design standards. A goal of the MDSP is to "allow sufficient and reasonable development opportunity for media and medical establishments, which have a special need to locate and expand within the Media District."



F. Developer has applied for and intends to develop a planned development on the Project Site, over a period not to exceed twenty (20) years, as fully described in Exhibit "C", Project Description, (the "Project"). The Project is discussed and analyzed in the Project Report on file at the Office of the City Planner (the "Project Report"), and in the Draft Environmental Impact Report dated November, 1996 (State Clearinghouse No. 96071055) and the Final Environmental Impact Report dated February, 1997 for the Project (collectively, the "EIR").

G. Consistent with Section 31-19128 of the Code, Developer desires to enter into a binding agreement with City for the provision and guarantee of the terms, conditions, and regulations for the construction of the Project as a planned development, including, but not limited to, identifying certain exactions to the City and the construction or the payment in lieu of construction of certain public improvements.

H. Developer desires to obtain the binding agreement of the City that the City will permit Developer to construct, develop, use, and operate the Project as a planned development in accordance with the City's ordinances, rules, regulations, and official policies governing permitted land uses, governing density and intensity of uses, dedications, and other exactions, and governing the design, improvement, and construction standards and specifications applicable to development of the Project and the Project Site in force at the time of execution of this Agreement, and without requiring Developer to dedicate property, or construct public improvements or make financial contributions to the City in lieu of public improvements, except as expressly set forth in this Agreement.

I. Developer has requested City to enter into this Agreement and proceedings have been taken in accordance with Government Code Sections 65864-65869.5 and Sections 31-1997 et seq. of the Code.

J. The City Council has determined that the Project is consistent with and satisfies the relevant provisions of the Code, including the goals and objectives of the City's General Plan, the MDSP, and the Media District Overlay Zone.

K. The City Council has found that the provisions of this Agreement are consistent with the relevant provisions of the Code, the City's General Plan, and any applicable specific plan.

L. All actions taken by City have been duly taken in accordance with all applicable legal requirements, including the California Environmental Quality Act, Public Resources Code Section 21000, et seq. ("CEQA"), and all other requirements for



notice, public hearings, findings, votes, and other procedural matters.

M. On March 18, 1997, the City Council adopted its Ordinance No. 3461 approving this Agreement.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants and agreements contained herein and other good and valuable consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. TERM AND GENERAL RIGHTS

1.1 Ownership. Developer represents to the City that it is the owner in fee of the Project Site as of the execution of this Agreement.

1.2 Term. The term of this Agreement shall commence on the date hereof and shall continue for twenty (20) years thereafter, unless said term is otherwise terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto after the satisfaction of all applicable public hearing and related procedural requirements.

1.3 Effective Date. This Agreement shall be dated, and the obligations of the parties hereunder shall be effective, as of the execution of the Agreement by all parties, which date shall be written on the first page of this Agreement (the "Effective Date").

1.4 Assignment. Developer may assign less than the entirety of its interests, rights, or obligations hereunder without prior written consent of the City. However, the Developer shall not assign or transfer the entirety of its interests, rights, or obligations under this Agreement to an unrelated third party without the prior written consent of the City, which consent shall not be withheld or delayed if both the financial condition and credit of the proposed assignee or transferee are reasonably satisfactory to the City and the Developer is not in default under this Agreement. Express assumption of the Developer's obligations under this Agreement by any such third-party assignee shall relieve the Developer from such obligations. Without limiting the generality of the foregoing, Developer may assign any of its interests, rights, and/or obligations hereunder, other than the entirety thereof, to run with or relate to any recorded lot or lots within the Project Site, without consent of the City, which assignment shall relieve Developer of such assigned obligations.

1.5 Amendment or Cancellation. Except as expressly stated to the contrary herein, this Agreement may be amended or canceled in whole or in part only by mutual consent of the parties and in



the manner provided for in Government Code Section 65868 and the City's Development Agreement Ordinance.

1.6 Termination. This Agreement shall be deemed terminated and of no further effect upon (a) expiration of the term of this Agreement as set forth in Section 1.2, or (b) completion of the Project in accordance with the terms of this Agreement including issuance of all required occupancy permits, whichever occurs first. Termination of this Agreement shall not affect any right or duty arising from the entitlements and approvals to develop the Project set forth under Section 2.1 below.

1.7 Covenant to be executed by Developer. Prior to the termination of this Agreement, Developer shall sign in recordable form, of which City shall cause its recordation at Developer's expense, a covenant on the Project Site which shall list the permitted uses of this Planned Development Zone, Development Standards of the Zone, and all on-going obligations required of Developer in this Agreement and as special requirements of this Zone (the "Covenant"). The Covenant shall be recorded with the Los Angeles County Recorder's Office and shall run with the land comprising the Project Site, and the burdens and benefits hereof shall bind and inure to the benefit of each of the parties hereto and all successors in interest to the parties hereto until the Covenant is removed from title. The Covenant shall set forth the process for amending or removing any provisions therein, which shall reflect the planned development process. In the event this Covenant is not recorded prior to the expiration of the term of this Agreement, this Agreement shall automatically be extended without further action by the parties but with respect only to the obligations of Developer identified in Exhibit "D", Conditions of Approval. In no event does this automatic extension apply to any vested rights for proposed development granted to Developer by this Agreement.

## 2. DEVELOPMENT OF THE PROJECT

2.1 Rights to Develop. Subject to the terms, conditions, and covenants of this Agreement, including the Reservations of Power in Section 2.3, Developer shall have a vested right to develop the Project as a planned development subject to the conditions of approval set forth in Exhibit "D", Conditions of Approval. Except as otherwise provided in this Agreement, the permitted uses of the Project Site, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, the minimum setbacks and other standards of Project design, the payment of fees or exactions, the construction of public improvements or the payment of fees in lieu thereof, and the reservation and dedication of land for public purposes shall be consistent with Exhibit "C", Project Description, and in compliance with the conditions of approval set forth in Exhibit



"D", Conditions of Approval. Any development standard not addressed in this Agreement or in Exhibit "D", Conditions of Approval, shall conform to those set forth in the MDM-1 Zone as of the date of this Agreement.

2.2 Action By City. Subject to the terms, conditions, and covenants of this Agreement, including the Reservations of Power in Section 2.3, the development regulations applicable to development of the Project and the Project Site shall be those ordinances, rules, regulations, official policies, standards, and specifications of the City governing the design, improvement, and construction standards and specifications applicable to development of the Project and the Project Site that are in force as of the execution of this Agreement (the "Existing Development Regulations"). Existing Development Regulations shall not mean taxes, fees, assessments, or charges imposed by the City which are inconsistent with any specific provision of this Agreement. No amendment to, revision of, or addition to any of the Existing Development Regulations which conflicts with the Project Approvals, as defined below, or prevents or delays development of the Project Site in accordance with this Agreement, shall have any application to the Project.

2.3 Reservation of Power. Notwithstanding any other provision of this Agreement, City reserves the right to apply Non-Conflicting Subsequent Regulations to the development of the Project, as may be enacted or amended hereafter. As used herein, "Non-Conflicting Subsequent Regulations" include regulations which do not conflict with this Agreement the Project Approvals, the Conditions of Approval, or the development of the Project, and are not necessarily limited to the following:

2.3.1 Building, electrical, mechanical, fire, and similar building codes based upon uniform codes adopted in, or incorporated by reference into, the Code, solely to the extent broadly applicable to all development projects in the City.

2.3.2 In the event of fire or other casualty requiring reconstruction of more than fifty percent (50%) of any building previously constructed hereunder, nothing herein shall prevent the City from applying to such reconstruction all requirements of the City's building, electrical, mechanical, and similar building codes based upon uniform codes adopted in, or incorporated by reference into, the Code, solely to the extent broadly applicable to all development projects in the City; provided that this provision is not intended to amend or increase any parking requirements or other development standards authorized or required in Exhibit "C", Project Description, or Exhibit "D", Conditions of Approval.



2.3.3 Except as expressly provided in Section 2.5 below, this Agreement shall not prevent the City from denying or from conditionally approving any development application for any subsequent project (other than any part of the Project) on the basis of the then existing or new rules, regulations, and policies.

2.3.4 As provided in Section 65869.5 of the Development Agreement Act, this section 2.3 shall not preclude the application to the Project or to the development of the Project Site of changes in City ordinances, resolutions, rules, regulations, laws, plans, or policies, the terms of which are specifically required to be applied to developments such as the Project by changes in state or federal laws or regulations. The City shall not apply to the Project any such rule, regulation, or policy which is inconsistent with this Agreement until the City makes a finding that such rule, regulation, or policy is necessary to comply with such State or Federal laws or regulations.

2.3.5 This section 2.3 shall not preclude the application to the Project or to the development of the Project Site of new rules, regulations, and policies of the City, other than those referenced in subsection 2.5.2, to the extent they are found by the City, based upon substantial evidence in the record, to be necessary to the health and safety of the public, as it relates to the Project Site, and are generally applicable to all properties in the City.

2.4 Illustrative Project Phasing. As described in this Agreement and in Exhibit "C", Project Description, Project build-out may occur over the twenty (20) year term of this Agreement. Developer's current best estimate of Project phasing, assuming the individual construction projects set forth in Exhibit "E", Illustrative Concept Diagram, is as set forth in Exhibit "F", Illustrative Project Phasing.

## 2.5 Vesting: Rules, Regulations and Official Policies.

2.5.1 General Statement. The City desires to cause all development permits and other approvals which may be required to develop the Project to be deemed vested in the Developer, as of the Effective Date, to the greatest extent permitted by law and, except as herein provided, to be free of: (a) all discretionary acts or review of the City or any body or agency thereof, it being understood that any subsequent review shall be ministerial; as further provided herein; and (b) the application of any subsequent building moratoria or restrictions on development which are inconsistent with this Agreement, including, but not limited to, those related to or affecting the rate, timing, phasing, or sequencing of the construction of the Project, whether by Subsequent Action (as defined in Section 2.5.2) or otherwise.



2.5.2 Existing Development Regulations to Govern. No amendment to, revision of, or addition to any of the Existing Development Regulations without Developer's written approval, whether adopted or approved by the City Council or any office, board, commission, or other agency of the City, or by the people of the City through charter amendment, referendum, initiative, or other ballot measure, or in any other fashion (a "Subsequent Action"), shall be effective or enforceable by the City with respect to the Project, its design, density, intensity of use, grading, construction, use or occupancy, or schedule of development, except as set forth in section 2.3. The City and the Developer, each to the extent legally permissible, specifically agree that any Subsequent Action which conflicts with the Project Approvals defined in Section 4.1 below shall have no application to the Project or the Project Site.

2.5.3 Right to Rebuild or Replace. The Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild, or replace the Project or any portion thereof throughout the applicable term for any reason, including, without limitation, for reasons of damage, destruction, or obsolescence of the Project or any portion thereof, subject to the Existing Development Regulations applicable to development of the Project, except to the extent limited by Section 2.3 of this Agreement, Reservation of Power.

### 3. DEVELOPER'S OBLIGATIONS

3.1 Conditions of Approval. Developer shall comply with the conditions of approval set forth in Exhibit "D", Conditions of Approval, attached hereto and incorporated by reference herein. These conditions include the mitigation measures of the EIR so that significant environmental effects will be mitigated or avoided. The City shall not impose any additional conditions, mitigation measures, exactions, reservations, dedications and public improvements beyond those provided in Exhibit "D", Conditions of Approval, or otherwise permitted under this Agreement, as a condition to the development of the Project.

3.2 Fees. No fees shall be vested by this Agreement, except as set forth in this section. Developer shall pay impact fees, whether imposed Citywide or in the Media District area in accordance with the terms of this Agreement. This Agreement vests with Developer the right to pay only those categories or types of City fees that are in effect as of the date of this Agreement; except that if after the Effective Date, the City imposes a Media District wide impact fee supported by a valid nexus study, and serving only to offset impacts of new development, then Developer shall be required to pay such Media District wide fee, provided that it is applied on a non-discriminatory basis.



For categories or types of fees in effect on the Effective Date, Developer, pursuant to the preceding paragraph, shall be required to pay the fee at the time such fee is normally required to be paid, provided that such fees are in effect Citywide or in the Media District area and applied on a non-discriminatory basis. Without limiting the generality of the foregoing, the following fees are discussed in more detail below: (1) the Non-Transportation Related Fees addressed in subsection 3.2.1 below, which includes four community facilities subfees for parks and recreation, fire, police, and libraries; (2) the Transportation Fee addressed in subsection 3.2.2 below; and (3) utility fees and charges and City processing fees addressed in subsection 3.2.4 below.

3.2.1 Non-Transportation Related Fees. As mitigation for certain environmental impacts identified in the EIR and in satisfaction of certain conditions of approval, Developer shall pay Non-Transportation Related Fees to the City pursuant to Section 31-2224 to 31-2230 of the Code, which is a combination of four subfees for parks and recreation, fire, police, and libraries. Such fees shall be paid at the time of issuance of building permits for development of the Project at the rate then in effect. All other provisions of Article 22 of Chapter 31 of the Burbank Municipal Code, as effective on the Effective Date of this Agreement, or as amended, but only if such amendment is requested to be applied by Developer, shall apply to the Project.

3.2.2 Transportation Improvements or Fees. As mitigation for certain environmental impacts identified in the EIR and in satisfaction of certain conditions of approval, Developer shall pay Transportation Related Fees to the City pursuant to Section 31-2217 to 31-2223 of the Code. Developer shall install or cause to be installed, the measures set forth in Exhibit "D", Conditions of Approval, relating to traffic improvements, except as expressly provided herein, to assure compliance with CEQA. The measure(s) shall be installed prior to the issuance of a Certificate of Occupancy for any building causing the net new development to equal or exceed the development thresholds set forth in the Conditions. In the event Developer desires to forego the installation of a traffic measure which is part of the City's fee program and to instead pay the Transportation Improvement Fee (the "Fee"), per Division 2, Article 22, Chapter 31 of the Code (Sections 31-2217 to 31-2223), Developer shall make its request to pay the Fee instead of installing the mitigation measure during the Confirmation of Compliance Process set forth in Section 4.3 below. The City Community Development Director ("Director") may permit the payment of the Fee only if the City is prepared to construct and install the required measure. Should the Director permit the payment of the Fee instead of the actual installation of the measure, then the Fee shall be paid by Developer at the time the relevant building permit application is made.



Notwithstanding the foregoing, Developer may pay Transportation Fees for certain measures which specifically limit Developer's share in the Conditions of Approval and which pertain to transportation measures outside the jurisdiction or control of the City. In such case, Developer's share is limited to the amount specified in the applicable condition, but such amount shall be adjusted annually as set forth in Section 31-2207 of the Code.

3.2.3 Calculation of Community Facilities Fees. The fees specified in subsections 3.2.1 and 3.2.2 above shall be calculated at the time any building permit is issued over the twenty year term of this Agreement, and at the rate in existence at that time as applicable to such building. While the amounts of such fees are not vested by this Agreement and may be amended by the City Council, whether based on the City of Burbank Community Facilities Study (Dec. 1992)/City of Burbank Development Impact Fee Report (Dec. 1992) and the Transportation Funding Strategy Nexus Summary, or on new nexus reports or studies, the categories of the different types of Community Facilities Fees shall remain unchanged, and shall be limited to the fees specified in subsections 3.2.1 and 3.2.2 above.

3.2.4 Utility and Processing Fees. Developer shall pay to City standard and non-discriminatory utility fees and other related utility rates including, but not limited to, hook-up charges and aid-in-construction fees in accordance with the applicable electrical or water rates and rules in effect at the time of application for service. Developer shall also pay all standard and non-discriminatory Citywide processing fees for building permits, administrative plan check, and similar fees associated with development of the Project which are in existence at the Effective Date of this Agreement at the rate in existence at the time said fees are normally required to be paid to the City.

3.3 In-Lieu Credit for Community Facilities Fees. Developer shall be entitled to any applicable exemptions specified in Section 31-2203 of the Code, credits specified in Section 31-2211 of the Code, and refunds as specified in Section 31-2210 of the Code, and all other provisions of Article 22 in effect on the date of this Agreement. Eligibility for in-lieu credit is as stated in Section 31-2211b of the Code. That section provides that any capital improvement specified in the "Transportation Funding Strategy Nexus Summary" or the "City of Burbank Community Facilities Study"/"City of Burbank Development Impact Fee Report" shall be eligible for an in-lieu credit. Additional credit may be permitted by the City Manager, or his/her designee, in accordance with Section 31-2211b, which states in part that eligibility for and the amount of the credit shall be "based upon whether the contribution meets capital improvement needs for which the



particular development fee has been imposed; whether the developer contribution will substitute for or otherwise reduce the need for capital improvements anticipated to be provided with development fee funds; and the value of the developer contribution."

Without limiting the foregoing, it is hereby agreed that the following transportation improvements and programs contained in Exhibit "D", Conditions of Approval, shall receive in-lieu credit in the amount of their cost to Developer: Conditions 16, 17, 23, 24, 25, 26, 27, 29, 30, and 34. It is further agreed that the following transportation Conditions, if met by the payment of fees as provided therein and not by the completion of the stand-alone improvements provided therein, shall be credited against the total amount of Transportation Improvements or Fees applicable to this Project: Conditions 18, 20, 21, and 28. To the extent legally permissible, the City will use its best efforts to include the following conditions as capital improvements in an amendment to the citywide nexus study, presently known as the "Transportation Funding Strategy Nexus Summary" or the "City of Burbank Community Facilities Study"/"City of Burbank Development Impact Fee Report": Conditions 19, 22, 33, 35, 39, and 40. Any excess transportation-related credit from any individual construction project may be applied by Developer against Transportation Improvement Fees for future construction projects in accordance with Section 31-2211.

Whenever Developer installs a transportation measure in a public right-of-way (or chooses to install any street-scape measures as credit for the Art in Public Places Program), the process set forth in Section 31-2211 of the Code shall be followed, whether or not an in-lieu credit is requested. No work shall be performed on City property until applicable permits have been issued. Developer may be required to execute necessary covenants to identify Developer's on-going maintenance obligations if Developer chooses to perform work on the public right of way beyond City standards.

3.4 Art in Public Places Program. Because the Project may be carried out over many years, in connection with the development of those portions of the Project which are covered by the City's Art in Public Places Program, established by Ordinance No. 3290 (the "Art Ordinance"), and as an alternative means of complying with the development standard set forth in the Art Ordinance, Developer may elect to pay the alternative fee provided by the Art Ordinance in lieu of constructing art on site. Developer may treat each 60 month period following the effective date of this Agreement as a phase as defined in Section 31-1114 (3) of the Code. If Developer elects to consolidate its fees during each consecutive 60-month period, then Developer shall provide City with adequate assurances that it will pay the appropriate allocation for art for each building on a cumulative basis at end of each 60-month period. At the end of each 60-month period,



Developer will have the opportunity to pay the in-lieu fee or to provide for a significant art work or works. Significant art work or works which are developed as part of an open space, pedestrian plaza, or common area on the Project Site may be used to satisfy the art requirement, or portion thereof, if use of these funds is approved in accordance with the City's Art in Public Places Program.

3.5 Dedications and Improvements. Developer shall complete those public improvements in connection with the Project as specified in Exhibit "D", Conditions of Approval, attached hereto and incorporated herein by reference; provided that Developer shall have the option of contributing funds to the City in lieu of constructing the required public improvements, facilities, and services. Developer is not required to make any dedications under this Agreement.

3.6 Phasing of Development: No Obligation to Proceed. The Project may be carried out over many years and in one or more phases, the exact number and timing of which will be determined by Developer based upon market conditions, industry factors, and business considerations, among other factors. The term of this Agreement is intended to allow sufficient time for Developer to complete the Project in an economically sound manner and in accordance with the Developer's schedule. Developer's current best estimate of Project phasing, assuming the individual construction projects set forth in Exhibit "E", Illustrative Concept Diagram, is as set forth in Exhibit "F", Illustrative Project Phasing. However, in no event shall the Developer be obligated to proceed with the Project in conformance with the phasing or illustrative examples as generally outlined in the Project Report or the EIR, and nothing in this Agreement shall be construed to require the Developer to proceed with the construction or any other implementation of the Project. The decision to proceed or to forbear or delay proceeding with Project implementation or construction shall be at Developer's sole discretion. Any failure by Developer to proceed with construction or implementation of the Project shall not result in any loss or diminution of development rights nor shall any such failure to proceed with, or delay or abandonment of, the Project give rise to any liability, claim or damages, or cause of action against the Developer.

3.7 Indemnification. The Developer agrees to and shall indemnify and hold harmless the City and its officers, agents, employees, and representatives from liability for damage or claims for damage or personal injury, including death, and claims for property damage which may arise from the negligent, direct or indirect, operations of the Developer or its contractors, subcontractors, agents, employees, or other persons acting on its behalf in relation to the Project. This hold harmless agreement applies to all damages and claims for damages suffered or alleged



to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both, and regardless of whether or not the insurance policies referred to in this Agreement are inapplicable. No indemnitee under this subsection shall settle any claim, demand, or liability suffered, or alleged to have been suffered, without the prior written consent of the Developer.

3.8 Insurance. Before beginning construction on the Project Site, the Developer shall cause the insurance required under this paragraph to be issued and thereafter to be maintained during the term of this Agreement, but only when actual work on the Project is being performed by the Developer or its contractors and subcontractors. Said insurance shall extend to the City and its elective and appointive boards, commissions, officers, agents, employees, and representatives and to the Developer and each contractor and subcontractor performing work on the Project. Said insurance shall include the following:

3.8.1 Workers compensation insurance for all persons employed at the Site and for all employees of each contractor and subcontractor. The Developer agrees to indemnify the City and its officers, agents, employees, and representatives for any damage resulting from failure to take out and maintain such insurance.

3.8.2 Public liability insurance in an amount of not less than \$1,000,000 for injuries (including death) to any one person and in an amount of not less than \$1,000,000 on account of any one occurrence; and for property damage in the amount of not less than \$1,000,000 on account of any one occurrence.

3.8.3 Developer shall maintain insurance in the amount of \$1,000,000 against damages sustained by reason of any action, claim, or demand made by reason of breach or claim for breach of contract or by reason of any contractual liability or alleged contractual liability on any contract entered into by the Developer or its contractors, subcontractors, agents, or employees with respect to the Project.

#### 4. CITY'S OBLIGATIONS

4.1 Project Approvals. To the greatest extent permitted by law, City shall be bound with respect to the density and intensity of use, the location of uses, the permitted uses, the maximum height and size of proposed buildings, the minimum setback of proposed buildings, other rules, regulations, and official policies of development applicable to the Project or the Project Site as set forth in this Agreement, any land use, zoning, site plan and all other approvals and entitlements required or obtained



for the development of the Project, including, but not limited to, zone changes (including designating the Project Site a "planned development zone" and, thereby, establishing special set-back standards), conditional use permits, grading permits, building permits, and site plan approvals that will accomplish development of the Project in accordance with the terms of this Agreement (collectively, the "Project Approvals"). The City hereby agrees that the land uses set forth in the Project Approvals are approved or will be approved pursuant to the terms of this Agreement, provided that the Developer satisfactorily complies with all administrative procedures, actions, payments, and criteria generally required of developers by the City for processing applications for developments and not in conflict with the terms of this Agreement. The City agrees promptly to grant and implement, in accordance with this Section 4, any necessary Project Approvals pursuant to the Existing Development Regulations, subject to the terms, conditions, and exceptions contained herein.

4.2 Processing of Applications and Permits. The City, upon satisfactory completion by the Developer of all required administrative procedures, actions, and payments of appropriate processing fees, if any, shall, in a timely fashion, proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project in accordance with this Agreement. City shall use its best efforts to assure that approval of the initial plan check (if no corrections are required) shall be rendered within 10 weeks of acceptance.

4.3 Scope of Subsequent Review/ Confirmation of Compliance Process. This planned development approval and Agreement constitute compliance with the City's development review requirements as set forth in Sections 31-1908 through 31-1914 of the Code (or other pre-building permit review process which is then in place). Nothing set forth herein shall impair or interfere with the right of the City to require the processing of building permits as required by law pursuant to the applicable provisions of the Code which are in effect as of the Effective Date and the provisions of City's Fire Codes and ordinances, health and safety codes and ordinances, and building, electrical, mechanical, and similar building codes; provided, however, that nothing herein shall authorize or permit the City to impose any condition on and/or withhold approval of any proposed building, the result of which would be inconsistent with any term or provision of this Agreement, and it is hereby further provided that the basis for the City's subsequent review shall be limited to:

(a) the provisions of the Code which are in effect as of the Effective Date;



(b) the provisions of City's Fire Codes and ordinances, health and safety codes and ordinances, and building, electrical, mechanical, and similar building codes;

(c) conformity with the conditions of approval set forth in Exhibit "D", Conditions of Approval, to this Agreement, which are in conformity with the Revised Mitigation Monitoring Program set forth in the EIR and which constitute the City's program to ensure compliance with all Project mitigations; and

(d) consistency with the Illustrative Concept Diagram set forth in Exhibit "E" or, if not consistent, a showing that there will be no new significant environmental impacts other than those analyzed in the EIR, those mitigated by mitigations Developer and the City may agree upon, or those otherwise approved by the City pursuant to CEQA.

Prior to each request for a building permit, Developer shall provide City with a Compliance Certificate ("Certificate") in a form created by Developer and approved by the City, which shall describe how all applicable conditions of approval and/or mitigation measures, such as consistency with a construction/noise control mitigation plan, have been fully complied with. The Certificate shall be distributed to relevant City departments for checking the representations made by Developer on the Certificate. City shall use its best efforts to complete this review within thirty (30) days of a completed Certificate and completed application for building permit.

4.4 Subsequent Environmental Review. In connection with the Project Approvals, the City has reviewed, considered, and certified the Project EIR, which complies with CEQA and the CEQA Guidelines. No further CEQA documents shall be required for subsequent Project Approvals unless revision of the EIR is required pursuant to Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 to 15164. In connection with the City's issuance of any additional Project Approvals or any action required for the Project which is subject to CEQA, the City shall promptly commence and diligently process any and all additional documents required by CEQA.

4.5 Imposition of Conditions, Mitigation Measures, Exactions Assessments, Fees, Reservations, Dedications, and Public Improvements. The City shall not impose any conditions, mitigation measures, exactions, assessments, fees, reservations, dedications, and/or public improvements as a condition of the Project Approvals or otherwise for the implementation of the Project not required as a Condition of Approval set forth in Exhibit "D", Conditions of Approval, or as otherwise set forth in this Agreement.



4.6 Infrastructure and Public Service Capacity. In order to assure the adequacy of the infrastructure and public services necessary for the Project, the City shall (i) to the extent the City retains responsibility for completing the off-site infrastructure and public services necessary to serve any new building on the Project Site, ensure that such infrastructure and public services are available in a timely fashion so as not to delay the occupancy of such building, and (ii) require projects outside of the Project Site which may significantly impact the infrastructure and public services necessary to serve the Project to mitigate any such impacts in the manner required by CEQA and any other law, ordinance, rule, or regulation, including, without limitation, bearing their appropriate share of any tax, assessment, fee, or similar charge imposed to finance infrastructure or other public service or improvement.

4.7 Cooperation.

4.7.1 Project Approvals. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, or building approval or other Project Approval for the development of the Project, and City agrees to cooperate with Developer in implementing all conditions of Project Approvals.

4.7.2 Other Governmental Permits. The Developer may apply for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with the Developer in its endeavors to obtain such permits and approvals. Such permits and approvals may include, but are not limited to, (i) permits from the State of California Department of Transportation relating to freeway improvements; (ii) permits required for the construction of the street improvement program; and (iii) permits or approvals required for anticipated surface water runoff.

4.7.3 Public Funding. In the event Developer seeks or applies for public funding related to the Project or related to any condition of approval for the Project, the City shall cooperate with the Developer in its efforts to obtain such funding.

4.8 Project Approvals Independent. All Project Approvals which may be granted pursuant to this Agreement, and all land use entitlements or approvals generally which have been issued or will be granted by the City with respect to the Project, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of